

(i) Hypertension screening shall be provided as part of all medical examinations and the annual dental examination for active duty service members. Screening shall also be provided to other beneficiaries, excluding those in the Children's Preventive Dentistry Program, at the time of their original request for care. Patients with abnormal screening results shall receive appropriate medical referrals.

(ii) Each DoD medical facility should periodically offer mass hypertension screening to encourage beneficiaries to monitor their blood pressure regularly.

(iii) Occupational health clinics shall make hypertension screening readily available to civilian employees, and shall encourage employees to use this service.

(iv) Public information campaigns emphasizing the dangers of hypertension and the importance of periodic hypertension screening and dietary regulation shall be conducted.

## **PART 86—CRIMINAL HISTORY BACKGROUND CHECKS ON INDIVIDUALS IN CHILD CARE SERVICES**

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AUTHORITY: 42 U.S.C. 13041.

SOURCE: 58 FR 52010, Oct. 6, 1993, unless otherwise noted.

### **§86.1 Purpose.**

This part: (a) Implements Public Law 101-647, section 231 and Public Law 102-190, section 1094.

(b) Requires procedures for existing and newly hired individuals and includes a review of personnel and security records to include a Federal Bureau of Investigation (FBI) fingerprint check and State Criminal History Repositories (SCHR) checks of residences

listed on employment or certification applications.

(c) Establishes policy, assigns responsibilities, and prescribes procedures for criminal history background checks for all existing and newly hired individuals involved in the provision of child care services as Federal employees, contractors, or in Federal facilities to children under the age of 18. The checks are required of all individuals in the Department of Defense involved in providing child care services defined in Public Law 101-647, and for policy reasons, those categories of individuals not expressly governed by the statute.

(d) Allows the Department to provisionally hire such individuals before the completion of a background check. However, at all times while children are in the care of that individual, the child care provider must be within sight and under the supervision of a staff person whose background check has been successfully completed. Healthcare personnel shall comply with guidance provided in the Memorandum from the Assistant Secretary of Defense for Health Affairs (ASD(HA))<sup>1</sup>, April 20, 1992.

(e) Includes all individuals providing child care services to children in accordance with 32 CFR part 310, Federal Personnel Manual (FPM)<sup>2</sup>, 32 CFR part 154, DoD Directive 6400.1<sup>3</sup>, DoD Instruction 6060.2<sup>4</sup>, DoD Instruction 6400.2<sup>5</sup>, DoD Directive 1400.13<sup>6</sup>, 32 CFR part 68, DoD Directive 6025.11<sup>7</sup>, DoD Directive 1015.1<sup>8</sup>, and 32 CFR part 212.

### **§86.2 Applicability.**

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the

<sup>1</sup>Copies may be obtained from OASD(HA) Room 3E346, The Pentagon, Washington, DC 220301-1200.

<sup>2</sup>Copies may be obtained from a Federal Depository Library, or a Federal Agency Personnel Office.

<sup>3</sup>Copies may be obtained from the National Technical Information Service, 5285 Port Royal, Springfield, VA 22161.

<sup>4</sup>See footnote 3 to §86.1(e).

<sup>5</sup>See footnote 3 to §86.1(e).

<sup>6</sup>See footnote 3 to §86.1(e).

<sup>7</sup>See footnote 3 to §86.1(e).

<sup>8</sup>See footnote 3 to §86.1(e).

Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as “the DoD Components”).

### §86.3 Definitions.

Terms used in this part are defined as follows.

(a) *Appropriated Fund (APF) Employees.* Personnel hired by DoD Components with appropriated funds as defined in the FPM, Chapter 731. This includes temporary employees, 18 years old or older, who work with children.

(b) *Care provider.* As defined in Public Law 101-647, section 231 and Public Law 102-190, section 1094. Providers included are current and prospective individuals hired with APF and nonappropriated funds (NAF) for education, treatment or healthcare, child care or youth activities, individuals employed under contract who work with children and those who are certified for care. Care providers are individuals working within programs that include alphabetically: Child Development Programs, DoD Dependents Schools, DoD-Operated or -Sponsored Activities, DoD Section 6 School Arrangements, Foster Care, Private Organizations on DoD Installations, and Youth Programs. Background checks are required for all civilian and military providers (except military health care providers) involved in child care services who have regular contact with children.

(c) *Child.* An unmarried person, whether natural child, adopted child, foster child, stepchild, or ward, who is a family member of a military member or DoD civilian or their spouse, and who is under the age of 18 years; or is incapable of self support because of a mental or physical incapacity and for whom treatment is authorized in a medical facility of the Military Services, as defined in DoD Directive 6400.1.

(d) *Child abuse and/or neglect.* The physical injury, sexual maltreatment, emotional maltreatment, deprivation of necessities, or other maltreatment of a child. The term encompasses both acts and omissions on the part of a responsible person, as defined in DoD Directive 6400.1.

(e) *Child care services.* DoD personnel and contractors who are involved in

any of the following: “Child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services,” as defined in Public Law 101-647, section 231.

(f) *Child Development Center (CDC).* An installation facility or part of a facility used for child care operated under the oversight of Component’s Child Development Programs (CDPs) and as defined in DoD Instruction 6060.2.

(g) *Child Development Programs (CDPs).* Programs for dependents of DoD personnel provided in CDCs, family child care (FCC) homes, and alternative child care options. The care provided is on a full-day, part-day, or hourly basis. Care is designed to protect the health and safety of children and promote their physical, social, emotional, and intellectual development, as defined in DoD Instruction 6060.2.

(h) *Child sexual abuse.* Employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct (or any simulation of such conduct) or the rape, molestation, prostitution, or any other such form of sexual exploitation of children, or incest with children. All sexual activity between an offender and a child, when the offender is in a position of power over the child, is considered sexual maltreatment, as defined in DoD Instruction 6400.2.

(i) *Criminal history background check.* An investigation based on fingerprints and other identifying information obtained by a law enforcement officer conducted through the Federal Bureau of Investigation-Identification Division (FBI-ID) and SCHR of all States that an employee or prospective employee list as current and former residences on an employment application initiated through the personnel programs of the applicable Federal Agencies, as defined in Public Law 101-647 or through the personnel program of a given government contractor.

(j) *Defense Clearance and Investigations Index (DCII)*. The central DoD record of investigative files and adjudicative actions such as clearances and access determinations, revocations, and denials concerning military, civilian, and contract personnel.

(k) *DoD Dependents Schools (DoDDS)*. Schools operated by the Department of Defense for minor dependents of military members or DoD civilians assigned to duty in foreign countries, as defined in DoD Directive 1400.13.

(l) *DoD-operated or -sponsored activity*. A contracted entity authorized by appropriate DoD officials to perform child care, education, treatment, or supervisory functions on DoD-controlled property. Examples include but are not limited to CDPs, FCC Programs, Medical Treatment Facilities, DoDDS, DoD Section 6 Schools, and Youth Programs.

(m) *DoD Section 6 Schools*. The educational arrangements made for the provision of education to eligible dependent children by the Department of Defense under Public Law 81-874, section 6, as defined in 32 CFR part 68, in the Continental United States, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

(n) *Family Child Care (FCC)*. Quarters-based child care provided in Government-owned or -leased quarters, in which care is provided on a regular basis for compensation, usually for more than 10 hours a week per child, to one or more (up to six) children, including the provider's own children under 8 years of age, as defined in DoD Instruction 6060.2

(o) *Foreign National Employees Overseas*. Non-U.S. citizens hired by the Department of Defense for employment on an overseas installation.

(p) *Foster care*. A voluntary or court-mandated program that provides 24-hour care and supportive services in a family home or group facility for children who cannot be properly cared for by their own family.

(q) *Government-contracted care providers*. An individual or a group of individuals hired under a Government contract to provide instruction, child care services, healthcare, or youth services.

FCC providers are not considered contracted Government employees for this part.

(r) *Healthcare personnel*. Personnel involved in the delivery of healthcare to children under the age of 18 on a frequent and regular basis. See ASD(HA) memorandum dated April 20, 1992.

(1) *Medical and dental care staff*. Physicians, dentists, nurse practitioners, clinical social workers, clinical psychologists, physicians' assistants, physical therapists, and speech pathologists.

(2) *Clinical support staff*. Clinical providers not granted defined clinical privileges to include residents, registered nurses, licensed practical nurses, nursing assistants, play therapists, and technicians, and defined in DoD Directive 6025.11.

(s) *Installation Records Check (IRC)*. An investigation conducted through the records of all installations of an individual's identified residences for the preceding 2 years before the date of the application. This record check shall include, at a minimum, police (base and/or military police, security office, or criminal investigators or local law enforcement) local files check, Drug and Alcohol Program, Family Housing, Medical Treatment Facility for Family Advocacy Program to include Service Central Registry records and mental health records, and any other record checks as appropriate, to the extent permitted by law.

(t) *National Agency Check (NAC)*. As defined in 32 CFR part 154.

(u) *National Agency Check and Inquiries (NACI)*. As defined in the FPM, Chapters 731 and 736.

(v) *Nonappropriated Fund Instrumentalities (NAFI) Employees*. Personnel hired by the DoD Components, compensated from NAFI funds as defined in DoD Directive 1015.1. This includes temporary employees, 18 years old or older, who work with children.

(w) *Private Organizations on DoD Installations*. A nongovernmental entity authorized by the Department of Defense to perform child care services, education, or supervisory functions with children on DoD-controlled property, as defined in 32 CFR part 212. Examples include religious groups and associations, such as scouts.

(x) *Respite care*. Provides short-term child care and supportive services in a family home or group facility for children to relieve stress, prevent child abuse, and promote family unity for a parent, foster parent, guardian, or family member.

(y) *Regular contact*. Responsible for a child or with access to children on a frequent basis as defined by the Component.

(z) *Specified volunteer position*. A position, designated by the DoD Component Head or designee, such as installation commander, requiring an installation record check because of the nature of the volunteer work in child care services.

(aa) *State Criminal History Repository (SCHR)*. The State's central record of investigative files. State information, including addresses, phone numbers, costs and remarks, is listed in appendix C to this part.

(bb) *Supervision*. Refers to having temporary responsibility for children in child care services, and temporary or permanent authority to exercise direction and control by an individual over an individual whose required background checks have been initiated but not completed.

(cc) *Temporary employees*. This category includes nonstatus appointments to a competitive service position for a specified period, not to exceed a year. This includes summer hires, student interns, and NAFI flexible category employees.

(dd) *Volunteer activities*. Activities where individuals offer assistance on an unpaid basis in child and youth programs or other activities on DoD installations. Examples include sports programs, religious programs, scouting programs, and preschools sponsored by private parent cooperatives or other associations conducted on the installation.

(ee) *Volunteers*. Individuals who offer program assistance on an unpaid basis.

(ff) *Youth programs*. DoD-sponsored activities, events, services, opportunities, information, and individual assistance responsive to the recreational, developmental, social, psychological, and cultural needs of eligible children and youth. Includes before and after school

programs as well as holiday and summer camps.

#### § 86.4 Policy.

It is Department of Defense policy to:

(a) Establish a standardized and comprehensive process for screening applicants for positions involving child care services on DoD installations and in DoD activities.

(b) Provide fair, impartial, and equitable treatment before an individual may be deemed suitable to serve as an employee, a certified care provider, a specified volunteer position, or as an individual employed under contract in activities covered by this part, 32 CFR part 310, Federal Personnel Manual (FPM), 32 CFR part 154, DoD Directive 6400.1, DoD Instruction 6060.2, DoD Instruction 6400.2, DoD Directive 1400.13, 32 CFR part 68, DoD Directive 6025.11, DoD Directive 1015.1, and 32 CFR part 212 by conducting a thorough review of all appropriate records as described in this part.

(c) Protect children by denying or removing from employment, contract, or volunteer status any applicant or current employee who is determined unsuitable to provide child care services because derogatory information is contained in a suitability investigation.

(d) Ensure that an individual is advised of proposed disciplinary action, decertification, or refusal to hire by the hiring authority or designee if disqualifying derogatory information is contained in a suitability investigation. The individual is given the opportunity to challenge the accuracy and completeness of reported information.

(e) Foster cooperation among the DoD Components, other Federal Agencies, State and county agencies, and other civilian authorities in conducting criminal history background checks.

#### § 86.5 Responsibilities.

(a) The *Assistant Secretary of Defense for Personnel and Readiness* shall: (1) Develop policy for conducting criminal history background checks on individuals seeking positions involving child care services.

(2) Monitor compliance with this part.

(3) Coordinate oversight of criminal history background checks as specified under this part.

(b) The *Heads of the DoD Components* shall: (1) Develop procedures to ensure compliance with the requirements of this part, in accordance with appendix A to this part.

(2) Provide oversight of process and procedures to conduct criminal history background checks to include assignment of proponentcy.

(3) Provide technical support and resources as required.

(4) Coordinate participation of specific organizations within the DoD Component involved in the conduct of the checks.

(5) Ensure that applicants and employees are made aware of their rights under 32 CFR part 310 including the right to challenge accuracy of records.

(6) Maintain the records of all individuals hired, certified, or employed under contract for positions that involve child care services for 2 years following termination of their service.

(7) Establish a mechanism to evaluate all adverse information resulting from criminal history background checks, using the criteria in appendix B to this part. Final suitability decisions are made by the DoD Component Head or designee.

#### § 86.6 Procedures.

The records of all existing employees and applicants for positions in child care services are reviewed by the Component designee according to the procedures prescribed in appendix A to this part.

#### APPENDIX A TO PART 86—CRIMINAL HISTORY BACKGROUND CHECK PROCEDURES

This appendix establishes the procedures for conducting criminal history background checks on existing and newly hired individuals required by Public Law 101-647, section 231 and Public Law 102-190, section 1094. Background checks are required for all civilian providers involved in child care services who have regular contact with children. The categories of providers include current and prospective individuals hired with APF and NAFI funds for education, treatment or healthcare, child care or youth activities, and individuals employed under contract involved in the provision of child care services.

In addition to the mandates of Public Law 102-190, section 1094, the Department of Defense requires that military members (except healthcare personnel), foster or respite care providers, FCC providers and family members, and specified volunteers shall have checks specified in this part.

#### A. Conducting Checks

Component designees shall notify existing and newly hired individuals and contractors of the requirement for a review of personnel and security records to include an FBI fingerprint check and SCHR checks of residences listed on employment and security applications.

1. *Fingerprint Check.* Law enforcement personnel shall forward completed forms through channels to the Office of Personnel Management (OPM) or Defense Investigative Service (DIS) for processing of FBI fingerprint forms.

2. *State Criminal History Repository (SCHR) Check.* DoD Installation-level personnel offices, in collaboration with law enforcement and security personnel, shall process State criminal history background checks for employment and shall ordinarily communicate in writing with each State identified in appendix B to part 86, providing full identifying information on each applicant and request confirmation that the individual has not been convicted in that State of a sex crime, an offense involving a child victim, a drug felony, or a violent crime. The DoD Component Heads may establish alternate procedures for conducting SCHR checks; e.g., a computerized, written, or telephonic check. The DoD Components are not required to wait longer than 60 days from the date of the request for a response from the SCHR personnel before taking action on a particular application. Authorities will depend on FBI fingerprint check validation if States do not respond.

3. *Installation Record Checks (IRC).* Consists of a local record check on an individual for a minimum of 2 years before the date of the application. This record check shall include, at a minimum, police (base and/or military police, security office, criminal investigators, or local law enforcement) local files checks, Drug and Alcohol Program, Family Housing, Medical Treatment Facility for Family Advocacy Program Service Central Registry records and mental health records, and any other record checks as appropriate to the extent permitted by law. A Service DCII may be conducted. The IRC shall be conducted by DoD Component personnel at the installation level. An IRC will be completed on individuals with a DoD affiliation such as living or working on an installation or is active duty member or family member. Individuals without DoD affiliation have no installation system of records to check and an IRC is not completed. Upon favorable

completion of the IRC, an individual may be selected and provide child care services under line of sight supervision until the required background checks are completed.

#### *B. Applicants*

##### *1. Appropriated Fund (APF) Applicants*

a. Except as otherwise provided in this subsection, the DoD Components shall process APF applicants using currently established procedures for completing background checks described in 32 CFR part 310. APF applicants must complete a SF-171, "Application for Federal Employment," and attach an SF-87, "Fingerprint Chart," completed by a law enforcement officer; and an SF-85P, "Questionnaire for Public Trust Positions" (Annotate Block "B" with code 03), for conduct of a NACI. The package shall be forwarded to the OPM.

b. The DoD Components shall assign responsibility for conducting the criminal history background checks through the SCHR to personnel offices working with law enforcement or investigative agencies. They shall conduct checks in all States that an employee or prospective employee lists as current and former residences in an employment or security application. It is deemed unnecessary to conduct checks before 18 years of age because juvenile records are unavailable. If no response is received from the State(s) within 60 days, determinations based upon the FBI report may be made. Responses received after this determination has been made must be provided to the determining authority.

c. Under Public Law 102-190, section 1094, the DoD Components may employ an individual pending completion of successful background checks described in Public Law 101-647, section 231. If an individual is so employed, at all times while children are in the care of that individual, he or she must be within sight and under the supervision of an individual whose background checks have been completed, with no derogatory reports.

d. Once it is clear that no derogatory information exists, line of sight supervision is terminated by the designee. If a derogatory report exists, Component personnel procedures shall prescribe appropriate action consistent with the criteria contained in this part.

##### *2. Nonappropriated Fund Instrumentalities (NAFI) Applicants*

a. Except as otherwise provided in this subsection, the DoD Components shall process NAFI applicants following established procedures for completing background checks. NAFI applicants must complete a DD Form 398-2 "Department of Defense National Agency Questionnaire," with reason for request identified as OTHER and annotated as CHILD CARE, and FD Form 258, "FBI Appli-

cant Fingerprint Card." Fingerprints shall be taken by the local law enforcement organization personnel and together with the DD Form 398-2 shall be forwarded to: Defense Investigative Service, Personnel Investigations Center, P.O. Box 1083, Baltimore, MD 21203-1083.

b. The DoD Components shall follow the procedures in the FPM, Chapter 731 and 736 and in paragraph B.1.b., c., and d. of this appendix to obtain fingerprints for the FBI, conduct criminal history background checks through the SCHR, and maintain employment of individuals pending the successful completion of the background checks.

##### *3. Foreign National Employees Overseas*

Foreign national employees overseas, while not expressly included within the law, are subject to the following record checks or those equivalent in scope to checks conducted on U.S. citizens:

a. Host-government law enforcement and security agency checks at the city, State (province), and national level, whenever permissible by the laws of the host government.

b. Defense Central Investigative Index (DCII).

c. FBI checks (when information exists regarding residence by the individual in the United States for 1 year or more since age 18).

d. When permissible by the laws of the host government, host-government checks are requested directly by the employing Service or agency. As an alternative, the DoD Components may request that overseas Military Service investigative elements obtain appropriate host-government checks. Where host-nations' arrangements preclude comparable criminal history checks, foreign nationals will not be eligible for employment in child care services.

##### *4. Temporary Employees*

This category includes summer hires, student interns, and NAFI flexible category employees. Background checks for these individuals are processed according to funding source; i.e., for APF employees (to OPM) or NAFI employees (to DIS). Installation designated points of contact shall notify applicants of report disposition.

##### *5. Healthcare Personnel*

This category includes civilian personnel involved in the delivery of healthcare. Within the context of such medical care, line of sight supervision must be viewed through the prism of existing medical quality assurance, clinical privileging, and licensure directives, which require pre-employment screens, enhanced surveillance of new employees, and ongoing monitoring of the performance of all healthcare providers. These

programs are inherent to both quality medical care and patient safety and are adequate and equivalent mechanisms for the sight and supervision requirements in paragraph B.1.c. and d. of this appendix. It should be noted that these quality assurance programs are not sufficient in and of themselves under Public Law 101-647, section 231. Therefore, the required FBI fingerprint check and the SCHR check must be completed as expeditiously as possible.

#### *C. Current Employees*

All currently employed individuals covered by this part shall have the FBI fingerprint and criminal history background check as described in Public Law 101-647, section 231. If the results of such checks, to include the SCHR, cannot be confirmed through an examination of available local records, action shall be initiated in accordance with paragraph B.1. of this appendix for APF employees and paragraph B.2. of this appendix for NAFI employees, and with paragraph D. of this appendix for individuals employed under contract. The SCHR checks are conducted in all cases in accordance with paragraph A.2. of this appendix. For the purposes of this part, no IRC is required for individuals employed before June 1991.

#### *D. Government Contract Employees*

1. Sponsoring activities are responsible for ensuring that the requirements in this part are included in the statement of work for all child care programs to be contracted. The contracting officer is responsible for performing any action necessary to verify that services provided by the contractor conform to contract quality requirements. Component designees for requiring activities shall ensure that the statement of work, at a minimum:

- a. States that the contractor must ensure its employees have proper criminal history background checks as outlined in this part.
- b. States that actual checks are performed by the Government.
- c. Includes procedures that the contractor must follow to obtain checks for its employees; for example, identify the office where employees report for processing, identify proper forms to be completed, etc. Also, identify the DoD Component for billing purposes, and identify the appropriate security point of contact or installation commander as the authorized recipient of background check results.
- d. States that employees may be permitted to work before completion of background checks, provided the employee is within sight of an individual who has successfully completed a background check.
- e. States that employees have the right to obtain a copy of the background check report, whom they should contact for the copy

and whom to contact for procedures to challenge the accuracy and completeness of the information in the report.

f. Requires that contractor employees who have previously received a background check must provide proof of the check or obtain a new one.

2. Requirements for child care services must be submitted to the contracting officer sufficiently in advance of the required performance start date to provide time for obtaining background checks. Sponsoring activities' designees shall coordinate with the contracting officer as soon as possible after a requirement for child care services becomes known.

3. Procedures for obtaining responses for background checks are the same as those for NAFI employees and response to derogatory information will occur through the appropriate designee and contractor. An IRC will be performed if the individual is a military member or family member, or has worked or lived on a military installation within 5 years.

#### *E. Other Providers*

Criminal history background checks with the FBI and the States are not required. Duplication of previous background checks are not required for personnel where official records demonstrate that an adequate check has already been conducted. This category includes the following:

1. *Military Members.* These are active duty individuals (other than healthcare personnel) who seek to provide child care services as part of a normal duty assignment or are involved during off-duty hours. For these members an IRC and a current security clearance meet the requirements of this part. In the absence of a current security clearance, a name check of the DCII must be conducted. When military members are employed in an APF or a NAFI position they will abide by background check requirements listed in paragraphs B.1. and B.2. of this appendix.

2. *Foster and Respite Care Providers and Family Members.* These are individuals who seek to provide foster care or respite child care within Government-owned or -leased quarters. The care provider, all other adults, and each child, age 12 and older, residing within the applicant's household must receive an IRC. In addition, the Component designee must also obtain a name check of the DCII on all adults.

3. *FCC Providers and Family Members.* These are individuals who seek licensing to provide child care within government-owned or -leased quarters. The care provider, all other adults, and each child, age 12 and older, residing within the applicant's household receive an IRC. In addition, the Component designee must obtain a name check of the DCII on all adults.

4. *Specified Volunteers.* Installation commanders shall designate those positions that are determined to be "specified." Individuals working in specified volunteer positions will have an IRC check because of the nature of their work in child care services. The opportunity for contact may be extensive, frequent, or over a period of time. They include, but are not limited to, positions involving extensive interaction alone, extended travel, and/or overnight activities with children. An IRC is required for volunteers who are active-duty, a family member, or a DoD civilian overseas. A volunteer is allowed to work upon completion of a favorable IRC. Background checks are not required for volunteers whose services will be of shorter duration than is required to perform the background checks and who are under line of sight supervision by an individual who has successfully completed a background check. The Components are required to provide additional implementing guidance.

#### *F. Employment Application Requirement*

Public Law 101-647, section 231 requires that each application for employment shall include a question asking whether the individual has ever been arrested for or charged with a crime involving a child, and, if so, requires a description of the disposition of the arrest or charge. The forms identified in paragraphs B.1.a. and B.2.a. of this appendix are signed by the applicant under penalty of perjury, with the applicable Federal punishment for perjury stated on the respective forms.

1. An applicant's signature indicates an understanding of the employer's obligation to require a record check as a condition of employment. Information on background checks shall be maintained in accordance with applicable Component implementing regulations.

2. Payment for the conduct of any criminal history background check is the responsibility of the requesting Service or agency.

3. The results of the background check are forwarded to the Component designee at the sending installation for appropriate action. A derogatory report would include, but not be limited to, the following applicable crimes: Any charge or conviction for a sex crime, an offense involving a child victim, a substance abuse felony, or a violent crime.

4. The hiring authority or designee is responsible for notifying the individual of a derogatory report. The individual may obtain a copy of the criminal history report and has the right to challenge the accuracy and completeness of any information contained in the report through the Privacy Program described in 32 CFR part 310. The individual may provide information concerning positive mitigating factors for any adverse information presented.

5. Employees whose criminal history background checks result in nonselection for employment or service shall be informed by the Component designee of the right to an administrative appeal under 32 CFR part 310. The individual may appeal with a specific request such as amendments to the records or request to file statement disagreeing with information in the record. If the employee's request for record information is refused, the individual is informed of his or her right to an administrative appeal. As appropriate, Component designees shall inform individuals of other avenues available to resolve matters of concern such as an administrative or negotiated grievance procedures. If the employee remains dissatisfied, he or she may seek a review. The Department of Defense recognizes the privacy interests and rights of all applicants and employees, and its own responsibility in ensuring a safe and secure environment for children within DoD activities or private organizations on DoD installations.

#### *G. Record Re-Verification*

This procedure consists of an IRC and a DCII name check and is required by the Component designee at a minimum every 5 years for all employees providing child care services and covers the time period since the completion of the last background check. NAFI employees who change duty stations will complete a new investigation when considered for employment. A new investigation is required by the Department of Defense if a break in service results in a time-lapse of more than 2 years. FCC, foster care and respite care providers, and their family members will complete an IRC annually.

#### *H. Supervision*

Refers to temporary responsibility for children in child care services, and relates to oversight for temporary or permanent authority to exercise direction and control by an individual over an individual whose required background checks have been initiated but not completed. Use of video equipment is acceptable provided it is monitored by an individual who has successfully completed a background check. Supervision procedures pending completion of background checks for healthcare personnel suggest that the Surgeons General shall require close clinical supervision and full compliance with existing DoD Directives, Instructions, and other guidance (issued by the Department of Defense and the Military Department concerned) on quality assurance, risk management, licensure, employee orientation, and credentials certification. These policies rely on process and judgment, and meet the intent of the "direct sight supervision" provision, affording local commanders a flexible and reasonable alternative.



I. *Programs.* Requirements cover all DoD-operated activities and private organizations on DoD installations and include, but are not limited to:

1. Child Development Programs.
  - a. Child development centers, part-day preschools, and enrichment programs.
  - b. Family child care.
  - c. Contracted Services, whether personal or non-personal services.
2. Youth Programs.
3. Dependents Schools operated by the Department of Defense.
4. Medical treatment facilities.
5. Other contracted services.
6. Private organizations on DoD installations.
7. Volunteer activities.

#### *J. Background Check Matrix*

This identifies the requirements of this part for background checks by category of personnel. These checks are initiated through the personnel offices in collaboration with law enforcement and security personnel. (Reminder: An IRC may only be completed on an individual who is a military member or family member, or who lives or works on a military installation.)

1. Appropriated Fund (APF) Employees. FBI, SCHR, and IRC. (SF-171, SF-87, and SF-85P).
2. Non-appropriated Fund Instrumentalities (NAFI) Employees. FBI, SCHR, and IRC. (DD Form 398-2 and FD Form 258).
3. Foreign National Employees Overseas. IRC and local government check.
4. Temporary Employees. FBI, SCHR, and IRC.
5. Current Employees. FBI and SCHR.
6. Government Contract Employees. FBI, SCHR, and IRC.
7. Other Providers.
  - a. Military Members. Military members will have an IRC and, if no current security clearance exists, a name check of the DCII. Checks are not required for military healthcare personnel.
  - b. Foster and Respite Care Providers and Family Members (age 12 and older). IRC and Service DCII (for adults).
  - c. Family Child Care Providers and Family Members (age 12 and older). IRC and Service DCII (for adults).
  - d. Specified Volunteers. IRC.

#### APPENDIX B TO PART 86—CRITERIA FOR CRIMINAL HISTORY BACKGROUND CHECK DISQUALIFICATION

The ultimate decision to determine how to use information obtained from the criminal history background checks in selection for positions involving the care, treatment, supervision, or education of children must incorporate a common sense decision based upon all known facts. Adverse information is

evaluated by the DoD Component Head or designee who is qualified at the appropriate level of command in interpreting criminal history background checks. All information of record both favorable and unfavorable will be assessed in terms of its relevance, recentness, and seriousness. Likewise, positive mitigating factors should be considered. Final suitability decisions shall be made by that commander or designee. Criteria that will result in disqualification of an applicant require careful screening of the data and include, but are not limited to, the following:

#### *A. Mandatory Disqualifying Criteria*

Any conviction for a sexual offense, a drug felony, a violent crime, or a criminal offense involving a child or children.

#### *B. Discretionary Criteria*

1. Acts that may tend to indicate poor judgment, unreliability, or untrustworthiness in working with children.
2. Any behavior; illness; or mental, physical, or emotional condition that in the opinion of a competent medical authority may cause a defect in judgment or reliability.
3. Offenses involving assault, battery, or other abuse of a victim, regardless of age of the victim.
4. Evidence or documentation of substance abuse dependency.
5. Illegal or improper use, possession, or addiction to any controlled or psychoactive substances, narcotic, cannibis, or other dangerous drug.
6. Sexual acts, conduct, or behavior that, because of the circumstances in which they occur, may indicate untrustworthiness, unreliability, lack of judgment, or irresponsibility in working with children.
7. A wide range of offenses such as arson, homicide, robbery, fraud, or any offense involving possession or use of a firearm.
8. Evidence that the individual is a fugitive from justice.
9. Evidence that the individual is an illegal alien who is not entitled to accept gainful employment for a position.
10. A finding of negligence in a mishap causing death or serious injury to a child or dependent person entrusted to their care.

#### *C. Suitability Considerations*

In making a determination of suitability, the evaluator shall consider the following additional factors to the extent that these examples are considered pertinent to the individual case:

1. The kind of position for which the individual is applying or employed.
2. The nature and seriousness of the conduct.
3. The recentness of the conduct.
4. The age of the individual at the time of the conduct.

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5. The circumstances surrounding the conduct.

6. Contributing social or environmental conditions.

7. The absence or presence of rehabilitation or efforts toward rehabilitation.

8. The nexus of the arrests in regard to the job to be performed.

### D. Questions

1. All applications, for each of the categories of individuals identified in §86.3, will include the following questions: "Have you ever been arrested for or charged with a crime involving a child? Have you ever been asked to resign because of or been decertified for a sexual offense? And, if so, "provide a description of the case disposition." For FCC, foster care, and respite care providers, this question is asked of the applicant regarding all adults, and all children 12 years and older, who reside in the household.

2. All applications shall state that the form is being signed under penalty of perjury. In addition, a false statement rendered by an employee may result in adverse action up to and including removal from Federal service.

3. Evaluation of criminal history background checks is made and monitored by qualified personnel at the appropriate level designated by the Component. Final suitability decisions are made by the designee.

### APPENDIX C TO PART 86—STATE INFORMATION

All SCHR checks should be accompanied by the following: 1. State form, if required. If no State form is required, the request should be on letterhead, beginning with the statement that the check is in accordance with Public Law 101-647. The request must include full identifying information, such as: Name, date of birth, social security number, complete addresses, etc.

2. Fingerprint set if required. Some State laws require a fingerprint set either on a State form or forms used by the agency.

3. Release statement signed by the applicant or employee. If required by the State, the release must be notarized.

4. Payment for the SCHR check.

5. Self-addressed, stamped envelope.

The following is an updated listing of State addresses, fees, and other information:

Address	Fee	Remarks
State of Alabama, Alabama Dept. of Public Safety, Attn: ABI Division, 5002 Washington Ave., Montgomery, AL 36130.	\$25 .....	Name check, COMM: 205-242-4372.
State of Alaska, Alaska Dept. of Public Safety, Information Systems Section, 5700 Tudor Road, Anchorage, AK 99507.	20 .....	Fingerprints required, reason for request required (comply with Pub. L.), name and address authorized request and receive SCHRC, COMM: 907-269-5511.
State of Arizona, Arizona Criminal Justice, Dept. of Public Safety, Information Systems Division, PO Box 6638, Phoenix, AZ 80550.	No check .....	Limited release, call/write, write for information. COMM: 602-223-2229.
State of Arkansas, Arkansas State Police, PO Box 5901, Little Rock, AR 72215.	No fee .....	Name check, written consent required, COMM: 501-221-8233.
State of California, Dept. of Justice, Bureau of Criminal Justice, Identification and Information Bureau, PO Box 903417, Sacramento, CA 94203-4170.	27 .....	Fingerprints required, COMM: 916-739-2786.
State of Colorado, Crime Information Center, Colorado Bureau of Investigation, 690 Kipling Street, #3000, Lakewood, CO 80215.	4.50 .....	Write/call for form, name check, COMM: 303-239-4222/4229.
State of Connecticut, Dept. of State Police, Bureau of Investigation, Building 4, 294 Colony Street, Meriden, CT 06450.	No fee .....	Name check, written consent required, copy of Pub. L. required, COMM: 203-238-6155.
State of Delaware, Delaware State Police-SBI, State Bureau of Investigation, PO Box 430, Dover, DE 19903.	25 .....	Fingerprints required, COMM: 302-739-5871.
Washington, DC, Identification and Records Division, Metropolitan Police Dept., Room 2076, 300 Indiana Avenue, NW., Washington, DC 20001.	No fee .....	Name check, written request required, COMM: 202-727-4245.
State of Florida, Florida Dept. of Law Enforcement, PO Box 1489, Tallahassee, FL 32302.	10 .....	Name check, check to: Dept. of Law Enforcement, COMM: 904-488-6236.
State of Georgia, Georgia Criminal Information Center, PO Box 370748, Decatur, GA 30037-0748.	15 .....	Write or call for form, notary and fingerprints required, COMM: 404-244-2644.
State of Hawaii, Criminal Justice Data Center, 465 South King Street, Room 101, Honolulu, HI 96813.	No fee .....	Name check, COMM: 808-587-3100.
State of Idaho, Idaho Dept. of Law Enforcement, Criminal Identification Bureau, 6064 Corporal Lane, Boise, ID 83704.	5 .....	Name check, written consent required, payment to: Dept. of Law Enforcement, COMM: 208-327-7130.
State of Illinois, Bureau of Identification, 260 North Chicago Street, Joliet, IL 60431-1060.	14 .....	Write or call for form, name check, COMM: 815-740-5184.
State of Indiana, Indiana State Police, 100 North Senate Avenue, Room 312, Indianapolis, IN 46204.	7 .....	Write or call for form, name check, COMM: 317-232-8266.
State of Iowa, Commissioner Paul H. Wieck II, Iowa Dept. of Public Safety, Wallace State Office Building, Des Moines, IA 50319.	6 .....	Release within State, COMM: 515-281-5138.

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Address	Fee	Remarks
State of Kansas, Kansas Bureau of Investigation, 1620 South-west Tyler, Topeka, KS 66612.	10 .....	Write or call for form, name check, \$5 per name, over two names, COMM: 913–232–6000.
State of Kentucky, Kentucky State Police Records, State Office Building, 1250 Louisville Road, Frankfort, KY 40601.	4 .....	Write or call for form, name check, COMM: 502–227–8700x214.
State of Louisiana, Louisiana State Police, Department of Public Safety, PO Box 66614, Baton Rouge, LA 70896.	13 .....	Write or call for form, fingerprints required, COMM: 502–925–6095.
State of Maine, State Bureau of Investigation, Department of Public Safety, Maine State Police, 36 Hospital Street, Augusta, ME 04333.	No fee .....	Name check, reason for check required; i.e., comply with Pub. L., COMM: 207–624–7009.
State of Maryland, Criminal Justice Information Service, Central Repository, Building G4, 1201 Reistertown Road, Pikesville, MD 21208.	18 .....	Write or call for form, name check, COMM: 410–764–4501.
State of Massachusetts, Executive Office of Public Safety, Criminal History Systems Board, 1010 Commonwealth Avenue, Boston, MA 02215.	No fee .....	Write or call for form, name check, COMM: 617–727–0090x12.
State of Michigan, Michigan State Police, FOI Unit, 7150 Harris Drive, Lansing, MI 48913.	No check .....	No release, COMM: 517–322–5531.
State of Minnesota, Criminal Justice Information Systems, Bureau of Criminal Apprehension, Minnesota Dept. of Public Safety, 1246 University Avenue, St. Paul, MN 55104.	8 .....	Name check, written consent required, COMM: 612–642–0670.
State of Mississippi, Department of Public Safety, ATTN: Identification Bureau, PO Box 958, Jackson, MS 39225.	No fee .....	Write or call for form, name check, COMM: 607–987–1212.
State of Missouri, Criminal Records Division, State Highway Patrol, Department of Public Safety, PO Box 568, Jefferson City, MO 65102.	5 .....	Write or call for form, name check COMM: 314–751–3313.
State of Montana, Identification Bureau, Department of Justice, 303 North Roberts, Helena, MT 59620–1418.	5 .....	Name check, COMM: 406–444–3625.
State of Nebraska, Nebraska State Patrol, PO Box 94907, State House Station, ATTN: CID, Lincoln, NE 68509–4907.	10 .....	Name check, COMM: 402–471–4545.
State of Nevada, Nevada Highway Patrol, 555 Wright Way, Carson City, NV 89711.	15 .....	Write or call for form, fingerprints required, COMM: 702–687–5300.
State of New Hampshire, New Hampshire State Policy HQ, Criminal Records, 10 Hazen Drive, Concord, NH 03305.	10 .....	Write or call for form, name check, COMM: 603–271–2538.
State of New Jersey, Division of State Police, Records and ID Section, PO Box 7068, West Trenton, NJ 08625–0068.	12 .....	Copy of Pub. L. required, name check, COMM: 609–882–2000.
State of New Mexico, Department of Public Safety, Records Bureau, PO Box 1628, Santa Fe, NM 87504–1628.	5 .....	Write or call for form, name check, notary required, COMM: 505–827–9181.
State of New York, Division of Criminal Justice Services, Executive Park Tower, Stuyvesant Plaza, Albany, NY 12203.	No check .....	No release at current time, state requires an agreement with agency to process, COMM: 518–485–7685.
State of North Carolina, Division of Criminal Information, Bureau of Investigation, 407 North Blount Street, Raleigh, NC 27601–1009.	14 .....	Fingerprint form required, copy of Pub. L. required, call/write for form, COMM: 919–662–4500.
State of North Dakota, Bureau of Criminal Information, PO Box 1054, Bismark, ND 58502.	20 .....	Name check, written consent required, COMM: 702–221–6180.
State of Ohio, Bureau of Criminal Information, PO Box 365, London, OH 43140.	15 .....	Write or call for form, written consent required, fingerprints required, COMM: 614–852–2556.
State of Oklahoma, Oklahoma Law Enforcement, Criminal History Information, ATTN: Criminal History, PO 11497, Oklahoma City, OK 73136.	10 .....	Write or call for form, name check, COMM: 405–848–6724.
State of Oregon, Criminal ID, State Police, 155 Cottage Street, NE, Salem, OR 97310.	10 .....	Name check, COMM: 503–378–3070.
State of Pennsylvania, Records and ID Division, Pennsylvania State Police, Dept. HQ, 1800 Elmerton Avenue, Harrisburg, PA 17110.	10 .....	Write or call for form, name check, 10 COMM: 717–783–5592.
State of Rhode Island, Rhode Island State Police, PO Box 185, North Scituate, RI 02857.	No fee .....	Name check, written consent required, COMM: 401–647–3311.
State of South Carolina, State Law Enforcement Division, ATTN: Criminal Records, PO Box 21398, Columbia, SC 29221–1398.	10 .....	Name check, COMM: 803–737–4205, DSN: 734–1110.
State of South Dakota, Division Criminal Investigation, Attorney General's Office, East Highway 34, Pierre, SD 57501–5070.	15 .....	Write or call for form, fingerprints required, COMM: 605–773–3334.
State of Tennessee, Tennessee Criminal Information Center, Tennessee Bureau of Investigation, PO Box 100940, Nashville, TN 37210.	23 .....	Write or call for form, fingerprints required, COMM: 615–741–3241.
State of Texas, Texas Crime Records Division, Texas Dept. of Public Safety, PO Box 15999, Austin, TX 78761–5999.	15 .....	Fingerprints required, written consent required, COMM: 512–465–2079.
State of Utah, Bureau of Criminal Identification, Utah Dept. of Public Safety, 4501 South 2700 West, Salt Lake City, UT 84119.	No fee .....	Write or call for form, name check, copy of law required, COMM: 801–965–4571.
State of Vermont, Vermont Criminal Information Center, Dept. of Public Safety, PO Box 189, Waterbury, VT 05676.	No fee .....	Name check, written consent required, COMM: 802–244–8786.

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Address	Fee	Remarks
Commonwealth of Virginia, Virginia Records Management Div., Dept. of State Police, PO Box 850761, Richmond, VA 23261-5076.	10 .....	Write or call for form, name check, COMM: 804-674-2024.
State of Washington, Washington, State Patrol, Identification Section, PO Box 42633, Olympia, WA 98504-2633.	10 .....	Write or call for form, name check, COMM: 206-753-0230/7272.
West Virginia State Police, Dept. of Public Safety, 725 Jefferson Road, South Charleston, WV 25309.	5 .....	Write or call for form, name check, COMM: 304-746-2180.
State of Wisconsin, Crime Information Bureau, Dept. of Justice, ATTN: Records Data Unit, PO Box 2718, Madison, WI 53701-2718.	2 .....	Write or call for form, name check, COMM: 608-266-7314.
State of Wyoming, Division of Criminal Investigation, 316 West 22nd Street, Cheyenne, WY 82002.	15 .....	Write or call for form, fingerprints required, written consent required, COMM: 307-777-7181.

PART 88—TRANSITION ASSISTANCE  
FOR MILITARY PERSONNEL

Sec.

88.1 Purpose.

88.2 Applicability and scope.

88.3 Definitions.

88.4 Policy.

88.5 Responsibilities.

88.6 Information requirements.

AUTHORITY: 10 U.S.C. chapter 58.

SOURCE: 59 FR 14559, Mar. 29, 1994, unless otherwise noted.

**§ 88.1 Purpose.**

(a) This part supersedes the Assistant Secretary of Defense For Force Management and Personnel memorandum,<sup>1</sup> "Policy Changes For Transition Assistance Initiatives," June 7, 1991, establishes policy, and assigns responsibilities for transition assistance programs for active duty military personnel and their families.

(b) Implements transition assistance programs for DoD military personnel and their families as outlined in section 502, Public Law 101-510; section 661 and section 662, Public Law 102-190, and sections 4401-4501, Public Law 102-484.

**§ 88.2 Applicability and scope.**

This part applies to: (a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, and the Defense Agencies (hereafter referred to collectively as "the DoD Components"). The

<sup>1</sup>Copies may be obtained, at cost, from the Directorate of Transition Support and Services, Office of the Assistant Secretary of Defense for Personnel and Readiness, 4000 Defense Pentagon, Washington, DC 20301-4000.

term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

(b) All active duty Service members and their families.

**§ 88.3 Definitions.**

(a) *Involuntary separation.* A member of the Military Service shall be considered to be involuntarily separated if he or she was on active duty or full-time National Guard duty on September 30, 1990 and:

(1) In the case of a Regular officer (other than a retired officer), he or she was involuntarily discharged under other than adverse conditions, as characterized by the Secretary of the separating Service member's Military Department. Discharge under adverse conditions is determined by referring to the reason for separation as well as the officer's service, as outlined in Department of Defense Directive 1332.30.<sup>2</sup>

(2) In the case of a Reserve officer who is on the active duty list or, if not on the active duty list, is on full-time active duty (or in the case of a member of the National Guard, full time National Guard duty) for the purpose of organizing, administering, recruiting, instructing, or training the Reserve components, he or she is involuntarily discharged or released from active duty or full-time National Guard duty (other than a release from active duty or full-time National Guard duty incident to a transfer to retired status) under other than adverse conditions as characterized by the Secretary of the separating Service member's Military

<sup>2</sup>Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.